

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

SHAWN JEFFERY WHIPPLE,

Civ. No. 10-741-CL

Petitioner,

v.

S. FRANKE,

**ORDER**

Respondent.

**PANNER, District Judge:**

Magistrate Judge Mark D. Clarke has filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Petitioner has filed objections. I have given this case de novo review. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F. 2d 1309, 1313 (9th Cir. 1981). I adopt the Report and Recommendation.

**DISCUSSION**

Petitioner pleaded guilty to attempted murder, assault, kidnapping, and felon in possession of a firearm. Petitioner received consecutive sentences for a total of 184 months.

Petitioner now asserts four grounds for habeas relief, all based on the alleged ineffective assistance of his trial counsel.

Petitioner argues that he should not have received consecutive sentences because his crimes "were an uninterrupted course of conduct. From the time it started to the time it ended it was merely one act of crime [broken] down into multiple charges." Under Oregon law, however, petitioner was properly subject to consecutive sentences because he committed a series of separate crimes. Petitioner's trial attorney was not ineffective for advising him on this issue.

Petitioner also contends that his attorney incorrectly advised him that there was a factual basis for the kidnapping conviction. After shooting the victim in the chest and hand, petitioner forced the victim to a secluded spot, bound him, and covered him with branches, incorrectly assuming that the victim would die from his wounds. I agree with the Report and Recommendation that these facts support a kidnapping conviction. I also agree with the Report and Recommendation that petitioner procedurally defaulted on his first ground for relief.

#### **CONCLUSION**

Magistrate Judge Clarke's Report and Recommendation (#15) is adopted. The petition (#2) is dismissed with prejudice for failure to state a claim. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is denied. See 28 U.S.C. §

2253(c)(2).

IT IS SO ORDERED.

DATED this 28 day of March, 2011.

  
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OWEN M. PANNER  
U.S. DISTRICT JUDGE